

Lascher at Large
By Edward L. Lascher
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This seems to be a retrenchment month, or at least one for collecting wits.

Conventional Unwisdom

My own wits were jangled by participation in a debate at the bar convention over whether the Conference of Delegates should have democratic processes inflicted upon it. That is to say, whether its composition should be elected (by local bar members, unaffiliated members of the State Bar, etc.), rather than appointed as at present.

Now, don't get me wrong, I understand there are plenty of arguments against democracy. The onward march of progress gets distracted by unpopular views (even popular ones, which can be far worse), natives get restless, trains run late, etc. But that wasn't the sort of thing against the reform proposal. Rather, we were told all about what wonderful people have participated in the annual conferences – invoking the names of about 487 of them – and what ringing declarations have emanated from them over the years. We wouldn't want to part with any of that now, would we?

At first, that seemed to be a non sequitur; you could just elect nice folks to the Conference to represent us and take care of the whole problem. But with a couple weeks to catch my breath I now see the opponents were right. Of course, you'll get crumb bums for delegates if you let crumb bums like the members of the bar elect them. Just ask those wonderful folks who in past years have been so stalwart about legalizing everything in sight and who this year showed the statesmanship to apply the California Bar's microscope to the U.S. defense budget. Wunnerful, wunnerful. Now, while we're on the subject, about the Legislature and the Congress . . .

Promotional Preening

I see by the legal papers that a Washington lawyer who had worked on a class action for 186 hours, culminating in failure of his clients to obtain any damages, has asked the Seventh Circuit to award him one-half million dollars, which he describes as “a nice even number”. That's unarguably true, but his hourly rate on that basis was kind of uneven – a

sloppy \$2688.17 per. I guess it's a judgment call on which needs rounding out more.

Of course, the lawyer, one Mozart G. Ratner (admittedly not a household word to the lay public but, as all of us know, one of the true giants of our profession), although unsuccessful on the merits did render a sterling service. Modestly announcing that Justice Thurgood Marshall was a personal friend, Ratner pointed out he had been able to get an extension of time to petition for cert simply by telephoning the justice directly. Again, he's got a point; that's a skill that not all of us possess, and there's no use hiding it under a bushel (so to speak) especially when payoff time comes around.

The article didn't say a word about any adverse reaction from the bar, although it disclosed that one of the circuit judges was "incredulous". Good grief, is that the best response our profession can generate? Incredulity? We wonder why lawyers and the judicial system are having prestige problems?

Lose the Battle, Win the Ink

Speaking of those who so handsomely enhance our prestige, the last word on the Marvin/Marvin/Michelson/Marshall caper is the appellate ruling that, no, the mere fact a court happens to be sitting in equity doesn't mean it can take one person's money and give it to another simply because the latter needs "rehabilitation". Wonder of wonders, the C.A. said there must be some basis before a chancellor can just launch off into redistributing the wealth. Just goes to show, if you read enough advance sheets long enough, you're bound to stumble over an outbreak of sanity here and there.

Master Mitchelson was equal to the occasion, though, explaining that "I lost the battle but won the war". The client is out the dough, but the lawyer won a priceless hype. And the rest of us can bask in the glow.

The Responding Finger Writes

Somebody said, wisely, that truth can be found in the strangest places – sometimes even in affidavits. (I even know who it was that said it: Chitty. Now if I only knew who Chitty was, we'd be in business.) Sometimes eternal verity can also be found on the law and motion calendar. I know what you're saying to yourselves, but trust me. I give you the following memorandum in opposition to a motion:

"The classifications of motions are limitless. They may be timely, well taken, appropriate, carefully reasoned,

forceful or even courageous. Or frivolous, ill considered, specious, irregular, even tasteless. However, one separate and distinct class is The Client's Motion. (Hereinafter "TCM") A TCM is filed following a conversation as follows:

"Client: 'Why don't you file a motion?' (For change of venue, dismissal, sanctions, or whatever.)

"Attorney: 'I can't.'

"Client: 'Why not?'

"Attorney: 'Because we don't have any grounds.'

"Client: 'I want you to do it anyway.'

"Attorney: 'All right, I'll give it a try.'"

"The burden placed upon the courts and opposing counsel by TCMs pretty much goes with the territory. The lawyer forced to file the motion is no happier about it than is the court which must calendar and hear it, or opposing counsel who has to respond. TCMs, like fever blisters, the common cold, and Howard Cosell, while nuisances, are tolerable ones.

"A TCM has several distinguishing features which easily identify it to a skilled observer. For one thing, it pops out of nowhere at a curiously untimely moment, usually a few months before the five year statute will run. Another tip-off is that it will usually be naked of supporting documentation. The third and perhaps the most distinguishing feature of a purebred TCM is that the moving party is obviously simply going through the motion of going through the motion. Those acquainted with moving counsel know that, when interested, they are capable of significant commentary, but not this time."

At that point, the author of the memorandum, perhaps purged, lost the spirit of the thing slightly and cited a few cases demonstrating the improvidence of the motion. The impression I got from the judge who snuck this to me is that the citations constituted unnecessary lily-gilding.

No Deliberate Speed

Right here on our own doorstep, there is a scandal brewing that

somebody in management had better look at before some federal judge starts slinging writs. I refer to the incredible, almost total collapse of the appellate section of the LA County Clerk's Office.

If your client asks how long it's going to take to handle an appeal from LA Super, say at least two years – notwithstanding that the Second District is virtually current on cases. You will wait six to nine months for an estimate on a Clerk's Transcript, and at least that long after you have paid for it before you see that precious document. (The new rules allowing do-it-yourself clerk's transcripts are wonderful, if – and they're big ones – you (1) have a reasonably cooperative opponent and (2) can get your hands on the court's minutes and other documents lawyers don't normally carry around in order to photocopy them.) It always used to be reporters who held up appeals. Now it is the LA Clerk; it takes as long to get the record on a general demurrer appeal as it used to for a three-month trial.

Before you spread those joyous tidings to your client, you'd better figure out how to explain the fact it's going to take this long even to have somebody listen to the fact that he's got an obviously wrong seven-figure judgment against him – execution of which he can't stay because there really is no such thing as an appeal bond unless you're an insurance company. Or how you're going to console her regarding 7% interest on judgments and 17% prime rates while she's waiting for the wherewithal to feed her kids she's already been awarded – on paper. You will hear the words "justice" and "delayed" in close proximity, so it's best to think up some snappy ad libs and rehearse until they're down pat.

The people for whom the courts operate are entitled to something better than this. We are told the situation must obtain because the appellate section is a low-rated, low-pay part of the Clerk's Office so that whenever anybody who is any good gets assigned there, he or she gets promoted out to a better job. "Can't be helped", the higher-ups say.

Bovine dropping! We have put together an elaborate structure of appellate review: courts of appeal on practically every street corner, central staffs, administrative officers, externs and what-not. In one county – the biggest in the world – that whole apparatus is mocked and nullified by cutting off the right to a reasonably expeditious appeal at the source: the record. As I said, it's a scandal and one that ought to be faced before somebody with more clout than a columnist gets mad about it.